

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SAN GABRIEL VALLEY WATER COMPANY (U337W) for Authority to Increase Rates Charged for Water Service in its Fontana Water Company Division to increase revenues by \$11,573,200 or 39.1% in 2003, \$3,078,400 or 7.3% in 2004, \$3,078,400 or 6.8% in 2005, and \$3,079,900 or 6.4% in 2006.

Application 02-11-044
(Filed November 25, 2002)

**ADMINISTRATIVE LAW JUDGE'S RULING
ON NOTICES OF INTENT TO SEEK COMPENSATION FILED BY
CITY OF FONTANA AND BY FONTANA UNIFIED SCHOOL DISTRICT**

Summary

Pursuant to Pub. Util. Code § 1804(b)(1), this ruling denies the requests of the City of Fontana (City) and the Fontana Unified School District (District) to be found eligible to receive compensation for their proposed participation in the general rate case (GRC) of San Gabriel Valley Water Company (San Gabriel). The requests are denied for the reason that the exclusion in § 1802(b),¹ which excludes any state, federal or local government agency, applies to City and District.

¹ All statutory references are to the Public Utilities Code unless otherwise stated.

Positions of the Parties

On June 4, 2003, City filed its Notice of Intent (NOI) to Seek Compensation pursuant to Rule 76.71 *et seq.* of the Commission's Rules of Practice and Procedure and § 1801 *et seq.* City notes that it is a "municipal corporation" and is the "official body by which the interests of the residents of the City of Fontana are represented on a local basis." City believes that, because of its familiarity with community needs and its experience in addressing local and regional public service issues, it offers a unique perspective that otherwise will not be provided in this proceeding. City also intends to present testimony regarding technical issues concerning the proposed mode of treatment of perchlorate contamination including the costs and benefits of ion exchange, water blending, centralized treatment, bioreaction and other treatment methods. City points out that it will present testimony that others will not present concerning the cost of such treatment and whether these costs are in line with the rate increase application.

Likewise, District notes that it is a customer of San Gabriel and asserts that the proposed rate increase will significantly affect the students of the District, because every dollar spent on a water rate increase directly reduces the money available for education. Due to these circumstances and its association with the community through students and their parents, District believes it offers a perspective not otherwise presented in this proceeding. District also expects to present testimony regarding the treatment of perchlorate contamination.

San Gabriel opposed the NOIs of City and District. San Gabriel asserts that the Legislature in § 1802(b) has unequivocally excluded government agencies such as City and District from eligibility for intervenor compensation with respect to their participation in Commission proceedings.

Discussion

I conclude that the City and District fail to qualify for compensation for their costs of participation under the terms of the Pub. Util. Code. Specifically, § 1801 provides that only “public utility customers” are eligible for compensation for participation in Commission proceedings.² Section 1802(b) defines a “customer” as follows:

“Customer” means any participant representing consumers, customers, or subscribers of any electrical, gas, telephone, telegraph, or water corporation that is subject to the jurisdiction of the Commission; any representative who has been authorized by a customer; or any representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers, but ***does not include any state, federal, or local government agency***, any publicly owned public utility, or any entity that, in the commission’s opinion, was established or formed by a local government entity for the purpose of participating in a commission proceeding. (§ 1802(b) [emphasis added].)

The exclusion from the class of “customers” of “any state, federal, or local government agency” applies to City. There can be no doubt that City is a “local government agency.” This fact is confirmed by a review of the California Government Code, which includes a “city” in its definitions of “local agency” or “public agency” for various purposes.³

² Likewise, Pub. Util. Code § 1803 authorizes the Commission to award advocate’s fees, expert witness fees, and related costs only to “customers.”

³ *See, e.g.*, Government Code Section 53983(b), concerning community facilities plans, which defines “local agency” to mean “ a city, county, city and county, special district, school district, community college district, county superintendent of schools, or any other agency of the state formed for the local performance of governmental or proprietary functions within limited boundaries.” Similarly, Government Code Section

Footnote continued on next page

Also, the exclusion from the class of “customers” of “any state, federal, or local government agency” applies to District. There can be no doubt that District is a “local government agency.” This fact is confirmed by a review of the California Government Code, which includes a “school district” in its definitions of “local agency” or “public agency” for various purposes.⁴ Even in instances where a statutory definition of “public agency” refers simply to a “district,” the term has been interpreted to include a school district.⁵

In short, the Legislature has unequivocally excluded local government agencies such as City and District from eligibility for intervenor compensation with respect to their participation in Commission proceedings, and the Commission has accepted and enforced that exclusion. To date, the Legislature has done nothing to change the rules governing intervenor compensation in that

6500 defines “public agency” for joint exercise of public agency powers as “the federal government or any federal department or agency, this state, an adjoining state or any state department or agency, a county, county board of education, city, public corporation, or public district of this state or an adjoining state.” *See generally*, Government Code, Title 5, concerning “Local Agencies” (Section 50001, *et seq.*), which includes several dozen definitions of “local agency” for a wide range of purposes, every one of which includes a “city” as a type of local agency.

⁴ *See, e.g.*, Government Code Section 53983(b), *supra*. Also, *See generally*, Government Code, Title 5, Division 2, concerning “Cities, Counties, and Other Agencies” (Section 53000 *et seq.*), which includes “districts” or “school districts” in varying definitions of “local agency” for a wide range of purposes.

⁵ Government Code Section 20056, relating to the Public Employees’ Retirement System, defines “public agency” to mean “any city, county, district, other local authority or public body of or within this state.” The California Attorney General has interpreted the predecessor of this provision, with identical language, as including a school district within the definition of a “public agency.” 12 Ops. Atty. Gen. 72, 73 (1948).

respect. Thus, as the Commission has previously observed, “[g]overnment entities who wish to participate in Commission proceedings must find the necessary funds in their [own] budgets.” (Decision 96-09-040, 68 CPUC2d 33.)

I do not question the importance of the issues that City and District wish to litigate in this proceeding. And, I do not wish to ignore the financial burden that such litigation would require City and District to bear, at a time of fiscal crisis for all levels of government in California. However, the Commission is constrained by the clear restrictions the Legislature has placed on eligibility for intervenor compensation. In this respect, moreover, the statutory restriction is unusually emphatic: It bars a governmental entity from receiving intervenor compensation either directly (by participation at the Commission in the entity’s own name) or indirectly (by participation through an agent or organization formed for this purpose). Unless and until the statute is amended, the Commission must deny the requests of City and District for a finding that they are eligible to claim intervenor compensation

Therefore, **IT IS RULED** that the requests of the City of Fontana and the Fontana Unified School District to be found eligible to receive compensation for their proposed participation in the general rate case of San Gabriel is denied.

Dated July 18, 2003, at San Francisco, California.

/s/ BERTRAM D. PATRICK

Bertram D. Patrick

Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling on Notices of Intent to Seek Compensation Filed by the City of Fontana and the Fontana Unified School District on all parties of record in this proceeding or their attorneys of record.

Dated July 18, 2003, at San Francisco, California.

/s/ ELIZABETH LEWIS

Elizabeth Lewis

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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